

HOUSE BILL No. 1371

DIGEST OF INTRODUCED BILL

Citations Affected: IC 32-20-5-1; IC 32-28-13; IC 36-1-8.5.

Synopsis: Public officials, liens, and restricted addresses. Provides that, for purposes of the law concerning common law liens, a public official is an individual who: (1) holds or formerly held office in; or (2) is or formerly was an employee of; the executive, judicial, or legislative branch of the state or federal government or a political subdivision of the state or federal government. Amends the procedures that must be followed to record a common law lien against the real or personal property of a public official. Prohibits a person from slandering the title to land by use of the law concerning common law liens. Provides that certain judicial officers, law enforcement officers, victims of domestic violence, and certain public officials who want to restrict access to their home addresses by means of a public property data base web site must submit a written request to the appropriate county, municipality, or township. Requires a county, municipality, or township that operates a public property data base web site to establish a process to prevent a member of the general public from gaining access to these home addresses by means of the public property data base web site. Makes conforming amendments.

Effective: July 1, 2015.

Richardson

January 14, 2015, read first time and referred to Committee on Government and Regulatory Reform.



First Regular Session of the 119th General Assembly (2015)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2014 Regular Session and 2014 Second Regular Technical Session of the General Assembly.

HOUSE BILL No. 1371

A BILL FOR AN ACT to amend the Indiana Code concerning property and local government.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 32-20-5-1 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 1. A person may not
3 use the privilege of:
4 (1) filing notices under this article; or
5 (2) **using the procedures under IC 32-28-13 concerning**
6 **common law liens;**
7 to slander the title to land.
8 SECTION 2. IC 32-28-13-1 IS AMENDED TO READ AS
9 FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 1. As used in this
10 chapter, "common law lien" means a lien against real or personal
11 property that is not:
12 (1) a statutory lien;
13 (2) a security interest created by agreement; or
14 (3) **except as provided in this chapter**, a judicial lien obtained
15 by legal or equitable process or proceedings.



SECTION 3. IC 32-28-13-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 2. As used in this chapter, "property owner" means the owner of record of real or personal property. ~~against which a common law lien is held under this chapter.~~

SECTION 4. IC 32-28-13-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 3. As used in this chapter, "public official" means an individual who:

- (1) holds ~~or formerly held~~ office in; or
- (2) is ~~or formerly was~~ an employee of; the executive, judicial, or legislative branch of the state or federal government or a political subdivision of the state or federal government.

SECTION 5. IC 32-28-13-4, AS AMENDED BY P.L.73-2009, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 4. (a) This chapter provides the procedure for filing and releasing a common law lien.

(b) This chapter does not create a common law lien. ~~A common law lien does not exist against the property of a public official for the performance or nonperformance of the public official's official duty.~~ A person asserting a common law lien must prove the existence of the lien:

- (1) as prescribed by the common law of Indiana; ~~or~~
- (2) ~~as provided in this chapter.~~

(c) Unless a common law lien becomes void at an earlier date under section 6(b) of this chapter, a common law lien is void if the common law lienholder fails to commence a suit on the common law lien within one hundred eighty (180) days after the date the common law lien is recorded under this chapter.

SECTION 6. IC 32-28-13-5, AS AMENDED BY P.L.73-2009, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 5. (a) A person who wishes to record a common law lien **against a person who is not a public official** must file with the county recorder of a county in which the real or personal property against which the common law lien is to be held is located a statement of the person's intention to hold a common law lien against the real or personal property. The statement must be recorded not later than sixty (60) days after the date of the last service provided by the person who wishes to record the lien.

(b) A statement of intention to hold a common law lien must meet all of the following requirements:

- (1) Except as provided in subsection (d), the person filing the



statement must swear or affirm that the facts contained in the statement are true to the best of the person's knowledge.

(2) The statement must be filed in duplicate.

(3) The statement must set forth **all of the following**:

(A) That the property owner is not a public official.

~~(A)~~ **(B)** The amount claimed to be owed by the property owner to the lienholder.

~~(B)~~ **(C)** The name and address of the lienholder.

~~(C)~~ **(D)** The name of the property owner.

~~(D)~~ **(E)** The last address of the property owner as shown on the property tax records of the county.

~~(E)~~ **(F)** The legal description and street and number, if any, of the real property against which the common law lien is filed.

~~(F)~~ **(G)** A full description of the personal property against which the common law lien is filed, including the location of the personal property. **and**

~~(G)~~ **(H)** The legal basis upon which the person asserts the right to hold the common law lien.

(c) The recorder shall send by first class mail one (1) of the duplicate statements filed under subsection (b) to the property owner at the address listed in the statement within three (3) business days after the statement is recorded. The county recorder shall record the date the statement is mailed to the property owner under this subsection. The county recorder shall collect a fee of two dollars (\$2) from the lienholder for each statement that is mailed under this subsection.

(d) The statement of intention to hold a common law lien required under subsection (b) may be verified and filed on behalf of a client by an attorney registered with the clerk of the supreme court as an attorney in good standing under the requirements of the supreme court.

SECTION 7. IC 32-28-13-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 6. (a) A property owner **who is not a public official** may send to the lienholder a notice requiring the lienholder to commence suit on the common law lien. The notice to commence suit must be made by registered or certified mail to the lienholder at the address given in the lienholder's statement filed under section 5 of this chapter.

(b) If the lienholder fails to commence suit within thirty (30) days after receiving the notice to commence suit, the common law lien is void. To release the common law lien from the **real or personal** property, the property owner must comply with the requirements of section 7 of this chapter.



SECTION 8. IC 32-28-13-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 7. (a) If a lienholder fails to commence suit after notice to commence suit is sent under section 6 of this chapter, a property owner **who is not a public official** may file an affidavit of service of notice to commence suit with the recorder of the county in which the statement of intention to hold a common law lien was recorded. The affidavit must:

(1) include:

(A) the date the notice to commence suit was received by the lienholder;

(B) a statement that at least thirty (30) days have elapsed from the date the notice to commence suit was received by the lienholder;

(C) a statement that a suit for foreclosure of the common law lien has not been filed and is not pending;

(D) a statement that an unsatisfied judgment has not been rendered on the common law lien; and

(E) a cross-reference specifying the record of the county recorder containing the statement of intention to hold a common law lien; and

(2) have attached to it a copy of:

(A) the notice to commence suit that was sent to the lienholder under section 6 of this chapter; and

(B) the return receipt of the notice to commence suit.

(b) The **real or personal** property against which the lien has been filed is released from the common law lien when the county recorder:

(1) records the affidavit of service of notice to commence suit in the miscellaneous record book of the recorder's office; and

(2) certifies in the county recorder's records that the lien is released.

(c) The county recorder shall collect a fee for filing the affidavit of service of notice to commence suit under the fee schedule established in IC 36-2-7-10.

SECTION 9. IC 32-28-13-7.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: **Sec. 7.5. (a) A person who wishes to record a common law lien against the real or personal property of a public official must bring an action in a circuit court or superior court that has jurisdiction in the county in which the real or personal property is located.**

(b) An action brought under this section must be tried by the court without a jury.



(c) A person who brings an action under this section must prove by clear and convincing evidence that there is a legal basis for recording the common law lien. To this end, a common law lien does not exist against the real or personal property of a public official for the performance or nonperformance of the public official's official duty.

(d) If the court finds that:

(1) there is a legal basis for recording a common law lien, the court shall order the county recorder to record the common law lien; or

(2) there is no legal basis for recording the common law lien, the court shall dismiss the action.

(e) If a person who brings an action under this section fails to maintain the action, the court may dismiss the action with prejudice.

(f) A county recorder may not record a common law lien against the real or personal property of a public official unless the county recorder is ordered to do so under subsection (d)(1).

(g) If a common law lien is improperly recorded against the real or personal property of a public official, the public official may request that a court:

(1) correct the title; and

(2) order the county recorder to show that the common law lien was void from the date the lien was recorded.

(h) If:

(1) a common law lien is improperly recorded against the real or personal property of a public official;

(2) an action brought under this section is dismissed with prejudice; or

(3) a person who brings an action under this section does not prevail in the action;

a public official who is injured by the bringing or maintaining of the action may bring a civil action against the person who brought the action under this section for actual damages, costs, and reasonable attorney's fees incurred by the public official.

SECTION 10. IC 32-28-13-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 8. (a) When a common law lien recorded under this chapter has been satisfied, the lienholder shall record a certificate of satisfaction with the recorder of the county in which the statement of intention to hold a common law lien was recorded. The certificate must specify the record of the county recorder that contains:



(1) the statement of intention to hold a common law lien filed by the lienholder under section 5 of this chapter; **or**

(2) the order of the court to record the common law lien issued under section 7.5(d)(1) of this chapter.

(b) The certificate of satisfaction recorded under this section must discharge and release the property owner from the common law lien and bar all suits and actions on the lien.

(c) The recorder shall collect a fee for recording a certificate of satisfaction under this section in accordance with the fee schedule established in IC 36-2-7-10.

SECTION 11. IC 36-1-8.5-2, AS ADDED BY P.L.106-2013, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 2. As used in this chapter, "covered person" means:

(1) a judge;

(2) a law enforcement officer; ~~or~~

(3) a victim of domestic violence; **or**

~~who submits a written request to have the person's home address restricted from disclosure under this chapter.~~

(4) a public official.

SECTION 12. IC 36-1-8.5-3, AS AMENDED BY P.L.14-2014, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 3. As used in this chapter, "judge" means an individual who ~~is employed or was~~ **holds or formerly employed held office** as:

(1) a judge of the supreme court, court of appeals, tax court, circuit court, superior court, municipal court, county court, federal court, or small claims court; **or**

(2) a magistrate, commissioner, or juvenile referee of a court.

SECTION 13. IC 36-1-8.5-4.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: **Sec. 4.5. As used in this chapter, "public official" means an individual who holds or formerly held office in the executive or legislative branch of the state or federal government or a political subdivision of the state or federal government.**

SECTION 14. IC 36-1-8.5-7, AS ADDED BY P.L.106-2013, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 7. (a) **A covered person who wants to restrict access to the covered person's home address by means of a public property data base web site must submit a written request to the unit that operates the public property data base web site.**



(b) A unit that operates a public property data base web site, directly or through a third party, ~~may~~ **shall** establish a process to prevent a member of the general public from gaining access to the home address of a covered person by means of the public property data base web site.

~~(b)~~ (c) **In establishing** a process ~~established by a unit under subsection (a); must meet the requirements of this chapter. under subsection (b), a unit shall do all of the following:~~

(1) **Determine the forms of the written request to restrict and allow public access.**

(2) **Specify any information or verification required by the unit to process the written request.**

(3) **Determine which person or department of the unit will receive and process the request.**

(4) **Provide a method in which a covered person is notified of the procedure to be used to restrict or allow disclosure of the home address of the covered person under this chapter.**

(d) **A unit may charge a covered person a reasonable fee to make a written request under this section.**

SECTION 15. IC 36-1-8.5-8 IS REPEALED [EFFECTIVE JULY 1, 2015]. ~~Sec. 8: A covered person who wants to restrict access to the covered person's home address by means of the public property data base web site must submit a written request to the unit. As part of the process developed by the unit under section 7 of this chapter, the unit may:~~

~~(1) determine the form of the written request;~~

~~(2) specify any information or verification required by the unit to process the request; and~~

~~(3) charge a covered person a reasonable fee to make a written request under this section.~~

SECTION 16. IC 36-1-8.5-9, AS ADDED BY P.L.106-2013, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 9. (a) This section applies to a covered person who has submitted a written request under section 8 **7(a)** of this chapter.

(b) A unit shall restrict access to the home address of a covered person until the covered person submits a written request to the unit to allow public access to the person's home address on the public property data base web site. ~~As part of the process developed by the unit under section 7 of this chapter, the unit may:~~

~~(1) determine the form of the written request;~~

~~(2) specify any information or verification required by the unit to process the request; and~~



- 1 (3) charge a covered person a reasonable fee to make a written
2 request under this section.
- 3 SECTION 17. IC 36-1-8.5-10, AS ADDED BY P.L.106-2013,
4 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
5 JULY 1, 2015]: Sec. 10. (a) This section applies to a covered person
6 who:
- 7 (1) after submitting a written request under section 8 7(a) of this
8 chapter, obtains a change of name under IC 34-28-2; and
9 (2) notifies the unit in writing of the name change.
- 10 (b) The unit shall prevent a search by the general public of the
11 public property data base web site from disclosing or otherwise
12 associating the covered person's home address with the covered
13 person's former name and new name. The unit may charge a reasonable
14 fee to process a name change under this section.

